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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,214

11/24/2008

Cliff Aaby

FSP0347

6572

88095

7590

10/06/2009

ARRIS

3871 Lakefield Drive
Suwanee, GA 30024

EXAMINER

KAY, MARY ANNE

ART UNIT

PAPER NUMBER

2426

NOTIFICATION DATE

DELIVERY MODE

10/06/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mirho@fspllc.com

Office Action Summary	Application No. 10/579,214	Applicant(s) AABY ET AL.	
	Examiner MARY ANNE KAY	Art Unit 2426	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/12/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-16 are pending in this application.

“Medium” Interpretation

2. From the specification at ¶ 0020, the Examiner has determined that the Applicant in accordance with statutory requirements, limits “medium” to be of a hardware character.

Claim Rejections - 35 USC § 102

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hendricks et al. (U.S. Patent 5,600,364, referred to as **Hendricks**).

Claim 1

Hendricks anticipates:

logic to compose information about multiple audio and/or video streams into an audio and/or video stream format (**Hendricks** Fig. 14, el. 396; Abstract, C15:22-40; Examiner's Note (EN): There are hundreds of channels of programming are managed in the system); and

logic to communicate the information about multiple audio and/or video streams
to a plurality of set top boxes (**Hendricks** Fig. 4-7; Abstract, C15:22-40;
EN: Multiple set top boxes are managed in the system).

Claim 2

Hendricks anticipates:

information about content categories (**Hendricks** C8:54-C9:8).

Claim 3

Hendricks anticipates:

information about audio and/or video titles (**Hendricks** Fig. 8b, el. 1052; C24:3-
10).

Claim 4

Hendricks anticipates:

logic to compose an index of audio and/or video information into the audio and/or
video stream format (**Hendricks** C8:54-C9:8, C12:7-50).

Claim 10

Hendricks anticipates:

logic to tune to a channel comprising an index of audio and/or video information
having a format of audio and/or video streams (**Hendricks** C16:10-24),
to read the index (**Hendricks** C16:10-24), and
to apply the index to identify one or more channels comprising information
describing audio and/or video content (**Hendricks** C12:7-50).

Claim 11

Hendricks anticipates:

logic to read information from the channel comprising an index of audio and/or video information (**Hendricks** C12:7-50) and,
when the channel contains an indication of invalid information, to tune to an alternate channel comprising the index in the format of audio and/or video streams (**Hendricks** C12:7-50; EN: Examiner interprets demographic information targeting switching as “invalid information” causing a channel change to an alternate channel), and
to read the index from the alternate channel (**Hendricks** C12:7-50; EN: Examiner interprets demographic information targeting switching as “invalid information” causing a channel change to an alternate channel).

Claim 12

Hendricks anticipates:

logic to tune to a channel comprising information about at least one audio and/or video stream (**Hendricks** C16:10-24),
the information about at least one audio and/or video stream formatted as an audio and/or video stream (**Hendricks** Fig. 14, el. 396; Abstract),
read the information about the at least one audio and/or video stream (**Hendricks** C16:10-24), and
display the information about the at least one audio and/or video stream (**Hendricks** C16:10-24).

Claim 13

Hendricks anticipates:

logic to read information from the channel and, when the channel contains an indication of invalid information (**Hendricks** C12:7-50),
to tune to an alternate channel comprising the index in the format of audio and/or video streams (**Hendricks** C12:7-50; EN: Examiner interprets demographic information targeting switching as “invalid information” causing a channel change to an alternate channel), and
to read the index from the alternate channel (**Hendricks** C12:7-50; EN: Examiner interprets demographic information targeting switching as “invalid information” causing a channel change to an alternate channel).

Claim 14

Hendricks anticipates:

logic to read the information about the at least one audio and/or video stream from the channel (**Hendricks** C12:7-50) and,
when the channel contains an indication of invalid information, to tune to an alternate channel comprising the information about the at least one audio and/or video stream (**Hendricks** C12:7-50; EN: Examiner interprets demographic information targeting switching as “invalid information” causing a channel change to an alternate channel), and
to read the information about the at least one audio and/or video stream from the alternate channel (**Hendricks** C12:7-50; EN: Examiner interprets

demographic information targeting switching as “invalid information”
causing a channel change to an alternate channel).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hendricks** in view of Aggarwal et al. (U.S. Patent 6,631,413, referred to as **Aggarwal**).

Claim 5

Hendricks fails to teach:

logic to alternatively deliver the information about multiple audio and/or video
streams on a first tunable channel and on a second tunable channel

Aggarwal teaches:

logic to alternatively deliver the information about multiple audio and/or video
streams on a first tunable channel and on a second tunable channel

(**Aggarwal** C3:66-C4:10; EN: Examiner interprets the transmitting digital
objects over TV channels as analogous to delivering programming
schedule information to a set top box. ¶ 11. applies).

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Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Hendricks** with the transmission of information over tunable channels as taught by **Aggarwal** providing utilizing spare bandwidth in a broadcast environment such as cable TV, satellite TV, or TV via the airwaves as a means of delivery.

Claim 6

Hendricks teaches:

information about content categories (**Hendricks** C8:54-C9:8; EN: Although the delivery logistics are different from direct set top delivery of menu information, the information will remain the same regarding the programming).

Claim 7

Hendricks teaches:

information about audio and/or video titles (**Hendricks** Fig. 8b, el. 1052; C24:3-10; EN: Although the delivery logistics are different from direct set top delivery of menu information, the information will remain the same regarding the programming).

Claim 8

Hendricks teaches:

the index of audio and/or video information (**Hendricks** C8:54-C9:8).

Hendricks fails to teach:

logic to alternatively deliver the index of audio and/or video information on a first tunable channel and on a second tunable channel.

Aggarwal teaches:

logic to alternatively deliver the index of audio and/or video information on a first tunable channel and on a second tunable channel (**Aggarwal** C3:66-C4:10; EN: Examiner interprets transmitting digital objects over TV channels as analogous to delivering programming schedule information to a set top box. Set top terminal applies template to information. ¶ 11. applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Hendricks** with the transmission of information over tunable channels as taught by **Aggarwal** providing utilizing spare bandwidth in a broadcast environment such as cable TV, satellite TV, or TV via the airwaves as a means of delivery.

Claim Rejections - 35 USC § 103

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Hendricks** in view of Ellis et al. (U.S. Patent 2004/0117831 A1, referred to as **Ellis**).

Claim 9

Hendricks fails to teach:

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logic to receive from a set top box a request for an audio and/or video stream,
the request comprising an identifier of a title of the audio and/or video
stream.

Ellis teaches:

logic to receive from a set top box a request for an audio and/or video stream,
the request comprising an identifier of a title of the audio and/or video
stream (**Ellis** ¶ 0101, 200 EN: Program guide includes an identifier of the
title associated with the program along with other information associated
with that program).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the
invention was made to modify the teachings of **Hendricks** with the request for
the stream and the identifier by title as taught by **Ellis** providing information from
the menu being sent to the headend or server for the program request.

Claim Rejections - 35 USC § 103

7. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over
Hendricks in view of Akiyama et al. (U.S. Patent 5,784,464, referred to as **Akiyama**).

Claim 15

Hendricks teaches:

logic to locate in the content index a channel comprising audio and/or video title
information (**Hendricks** C18:60-C19:7), and

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to tune to the channel comprising the audio and/or video title information

(**Hendricks** C18:60-C19:7), and

to locate the audio and/or video title information in the channel comprising the audio and/or video title information (**Hendricks** C18:60-C19:7),

Hendricks fails to teach:

to apply the audio and/or video title information and a service group identifier in a request communicated to an on-demand server system

Akiyama teaches:

to apply the audio and/or video title information and a service group identifier in a request communicated to an on-demand server system (**Akiyama** C11:12-26; EN: Examiner interprets user connection to the arbitrary service client and making the request the same as the request originating from the set top box to the on-demand server. ¶ 11. applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Hendricks** with the identification information in the file request as taught by **Akiyama** providing an provider identification for any charges to be forwarded to and for network authentication use.

Claim 16

Hendricks teaches:

logic to locate in the content index an alternate channel comprising audio and/or video title information (**Hendricks** C12:7-50), and to tune to the alternate channel comprising the audio and/or video title information when the channel comprising the audio and/or video title information comprises an indication of invalid data (**Hendricks** C12:7-50; EN: Examiner interprets demographic information targeting switching as “invalid information” causing a channel change to an alternate channel. Examiner interprets searching to include title search. ¶ 11. applies).

Examination Considerations

8. The claims and only the claims form the metes and bounds of the invention. “Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969) (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

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9. Examiner's Notes are provided with the cited references to prior art to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

10. Unless otherwise annotated, Examiner's statements are to be interpreted in reference to that of one of ordinary skill in the art. Statements made in reference to the condition of the disclosure constitute, on the face of it, the basis and such would be obvious to one of ordinary skill in the art, establishing thereby an inherent prima facie statement.

11. Examiner's Opinion: ¶¶ 8.-10. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

Conclusion

12. The prior art of record and not relied upon is considered pertinent to Applicant's disclosure.

- Rainisto, European Patent Application 1355448 A2 I

- Lupoli et al., U.S. PGPub 2005/0092823 A1 I

- Lambert, U.S. Patent 4,381,522 A I
- Hamilton et al., U.S. Patent 5,579,055 A I
- Bruette et al., U.S. Patent 5,694,176 A I
- Ten Kate et al., U.S. Patent 6,601,237
- Moeller et al., U.S. Patent 5,828,370

13. Claims 1-16 are rejected.

Correspondence Information

14. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to MARY ANNE KAY whose telephone number is (571)270-5677. The Examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM, EST.

As detailed in MPEP 502.03, communications via Internet e-mail are at the discretion of the Applicant. Without a written authorization by Applicant recorded in the Applicant's file, the USPTO will not respond via e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application. The following is an example authorization which may be used by the Applicant:

Notwithstanding the lack of security with Internet Communications, I hereby authorize the USPTO to communicate with me concerning any subject matter related to the instant application by e-mail. I understand that a copy of such communications related to formal submissions will be made of record in the applications file.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Joseph Hirl can be reached on (571)272-3685. Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,
Washington, D. C. 20231;

Hand delivered to:

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401 Dulany Street,
Alexandria, Virginia 22313,
(located on the first floor of the south side of the Randolph Building);

or faxed to:

(571)273-8300 (for formal communications intended for entry).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Mary Anne Kay
Examiner

/Joseph P. Hirl/
Supervisory Patent Examiner, Art Unit 2426
September 30, 2009